

COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Common Law and Equity Division

2022/App/Mag/ sts/ 000023

BETWEEN

TIFFANY LINDSEY

&

TJASA BARR

Appellants

AND

ANGELIA MURPHY

Respondent

Before: The Hon. Madam Justice Camille Darville- Gomez

Appearances: Franklyn Williams for the Appellant

Angelia Murphy, the Respondent appearing Pro Se

Hearing Date: 31st August, 2022

JUDGMENT

Darville-Gomez, J.

Introduction & Background

[1] This is an appeal by the Appellants from the decision of Stipendiary and Circuit Magistrate Mr. Samuel McKinney, made on the 20th May, 2022 where he ruled as follows:

“In conclusion, having considered the evidence in this case, the court finds on the balance of probabilities that the defendant having been entrusted with the care of the Plaintiff’s vehicle for her own personal use, breached that duty of care when without the Plaintiff’s knowledge or permission, she allowed her daughter use of the Plaintiff’s vehicle to attend a late night party. Judgment is entered for the Plaintiff in the amount of \$5,000.00 plus Costs \$100.00.”

[2] The Appellants filed a Notice of Appeal on the 8th day of June, 2022 on the following grounds:

- (i) That the Learned Magistrate erred in Law and in fact by failing, disallowing, and or preventing Appellant Tjasa Barr from presenting a defence;

- (ii) That the Learned Magistrate erred in law by finding the Appellants monetarily liable upon the theft by person or persons unknown of the Respondent's vehicle;
- (iii) That the Learned Magistrate erred in law and in fact by finding that Appellants momentarily liable upon the theft by person or persons unknown of the Respondent's vehicle in circumstances in which the Respondent acknowledged having made an insurance claim for the replacement value of the Respondent's vehicle;
- (iv) Any other ground or grounds deemed just by this Honourable Court."

Law – Jurisdiction

[3] Section 68 of the Magistrate Court Act, 1897 prescribes,

“ The court may adjourn the hearing of the appeal, and may upon the hearing thereof confirm, reverse, vary or modify the decision of the magistrate or remit the matter with the opinion of the court thereon to the magistrate, or may make such other order in the matter as it may think just, and may by such order exercise any power which the magistrate might have exercised, and such order shall have the same effect and may be enforced in the same manner as if it had been made by the magistrate. ”

Followed by Section 69 of the Act which reads,

*“The court may make such order as to the costs to be paid by either party as it may think just, and in the event of costs being allowed may direct a lump sum to be paid by way of costs not exceeding fifty dollars, for each day of attendance at court according to the importance of the appeal, or the length of time occupied by the hearing thereof, and such sum shall cover all fees of office and all fees of counsel or attorney: Provided that no magistrate shall be liable to any costs in respect of any appeal against his decision.
Provided that no magistrate shall be liable to any costs in respect of any appeal against his decision. “*

[4] I now consider each of the grounds of appeal of the Appellants.

The Grounds

GROUND 1- That the Learned Magistrate erred in Law and in fact by failing, disallowing, and or preventing Appellant Tjasa Barr from presenting a defence;

[5] The Second Appellant swore an Affidavit in support of the appeal on July 25, 2022 where she confirmed that she is a full time student at Hillsborough Community College in Tampa, Florida. She averred that her attorney advised the Magistrate of this fact and requested a date after June, 2022 to accommodate her and enable her to be present and enter a defence. She asserted that the Magistrate agreed to do so. She explained that the hearing was adjourned until March, 2022 and the Magistrate was then reminded of her status and the Magistrate agreed to accommodate her. However, she asserted that the hearing was adjourned until May, 2022 and was concluded on that date. She complained that in concluding the matter on that date, an adverse finding was

made against her and her mother. She complained that she was deprived and prevented from entering a defence and giving evidence that she is advised is corroborative of that of her mother.

- [6] The Record of Appeal does not reflect the Second Appellant's contention that she and the First Appellant were represented by an attorney; or, that the Magistrate acceded to her request for an adjournment until her return to the jurisdiction. While her Affidavit referred to her having an attorney, she did not provide the name and the attorney did not swear an affidavit to corroborate her contention. Further, it appeared from the transcript that neither the Appellants, nor the Respondent were represented by an attorney at the trial.
- [7] In any event, there was no obligation on the Magistrate to accede to her request for an adjournment until after June, 2022. From her own evidence, the Magistrate had already granted an adjournment from March to May, 2022. It was incumbent upon the Second Appellant as a party to an action to present herself on the adjourned date to defend the claim against her. Certainly, her mother, the First Appellant was present and aware of the adjourned dates.
- [8] Therefore, I find no merit in this ground of appeal.

GROUND 2 - That the Learned Magistrate erred in law by finding the Appellants monetarily liable upon the theft by person or persons unknown of the Respondent's vehicle;

- [9] The Magistrate in his written decision found that (i) the vehicle was loaned to the First Appellant exclusively by the Respondent (therefore, it ought not to have been loaned to or used by any other person except the First Appellant); (ii) the First Appellant owed a duty of care to take all reasonable steps to safeguard the vehicle loaned to her and to return it to the Respondent in the same condition as she had received it; (iii) the First Appellant never entered or signed any rental agreement or contract with the Respondent giving rise to the belief that a vehicle rental agreement was in place and further, that no money was paid by the First Appellant to the Respondent or any agent of hers signifying that a contractual relationship existed.
- [10] Therefore, the Magistrate found on the balance of probability that the First Appellant was entrusted with the care of the Respondent's vehicle for her own personal use. Further, that she breached that duty of care when without the Respondent's knowledge or permission, she allowed her daughter, the Second Appellant to use the Respondent's vehicle to attend a late night party.
- [11] The Magistrate concluded that there was no contractual relationship between the parties and therefore, he accepted the evidence of the Respondent that the car was loaned to the First Appellant. There is nothing to suggest that I cannot or should not accept the learned Magistrate's version of the facts. In any event, on the facts as found by the Magistrate, the Appellant was under a strict obligation to protect the vehicle because she was a bailee.
- [12] Therefore, I find no merit in this ground.

GROUND 3 - That the Learned Magistrate erred in law and in fact by finding that Appellants momentarily liable upon the theft by person or persons unknown of the Respondent's vehicle in

circumstances in which the Respondent acknowledged having made an insurance claim for the replacement value of the Respondent's vehicle;

- [13] This issue regarding an insurance claim was raised in the trial by the First Appellant. I refer to the testimony of the First Appellant as follows:

“ I told Angelia to go to her insurance and find out what was the coverage on the vehicle and that we would deal with it after my wedding.”

- [14] Further, in cross-examination this evidence came out regarding the insurance:

The Respondent asked the First Appellant: *“ Why don't you want to pay me for the replacement of my vehicle you are responsible for?”*

The First Appellant responded: *“You charge me one hundred and fifty dollars for use of the vehicle so I shouldn't have to pay you any liability.”*

The Respondent answered: *“My insurance didn't pay me for the replacement of my vehicle. “*

- [15] Therefore, the issue of the insurance was raised and addressed at the trial in the Magistrates Court. However, and in any event, it is completely irrelevant to the disposition of the matter on appeal because the doctrine of privity of contract applies to third parties to the policy of insurance. The Appellant is a third party to the contract and can neither be sued or sue on the policy of insurance. In any event, on the facts as determined by the learned Magistrate, the relationship between the Appellants and Respondent is one of bailment which gives rise to strict liability on the part of the bailee.

- [16] Accordingly, I see no merit in this ground of appeal.

GROUND 4 – Any other ground or grounds that this Honourable Court deems just

The Judgment Sum

- [17] The Appellant Counsel argued that the Respondent deceived the Court by claiming that the value of the Nissan Cube 2013 was Five Thousand Dollars (\$5,000.00). It is pellucid from the face of the invoice tendered at Exhibit “TL2” that the sum of Five Thousand Six Dollars (\$5,600) was paid for two vehicles; both Nissan Cubes, one for Two Thousand, Eight Hundred and Fifty Dollars (\$2,850) and the other for Two Thousand, Seven Hundred and Fifty Dollars (\$2,750).
- [18] The actual purchase price of the vehicle in dispute, a Nissan Cube 2013 totaled Two Thousand, Eight Hundred and Fifty Dollars (\$2,850.00)
- [19] Based on the documentary evidence, I find that the learned Magistrate erred when he found that the Respondent suffered damage in the amount of Five Thousand Dollars (\$5,000). Clearly, the documentary evidence tendered showed that the damage suffered by the Respondent was Two Thousand, Eight Hundred and Fifty Dollars (\$2,850).

[20] In the circumstances, I dismiss the appeal on the issue of liability and allow the appeal on the quantum of damages.

Award of Costs

[21] Counsel for the Appellant argued that the Magistrate has no jurisdiction to award costs in a summary matter and relied on section 43 and the Second Schedule of the Magistrate's Act, Chapter 54 which read as follows:

"43. The costs of all civil proceedings shall be in the discretion of the magistrate, and shall be limited to the fees comprised in the Second Schedule to this Act:

Provided that the magistrate may in addition to such fees, in his discretion, allow any reasonable sum or sums, not exceeding five hundred dollars by way of compensation for the attendance and loss of time of the parties and witnesses, and attorney's costs, and all sums so allowed in any civil proceeding shall be recovered as costs therein."

[22] Having reviewed the Second Schedule, I interpret "all sums so allowed in any civil proceedings shall be recovered as costs therein" to relate to process server/ officers' fees (as stipulated), or any other fee(s) a Learned Magistrate may associate with a particular matter. The only restriction appears to be that it must not exceed the sum of Five Hundred (\$500.00).

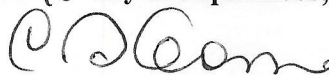
[23] Therefore I disagree with the Appellant's Counsel that the learned magistrate did not have the power to award costs.

Disposition

[24] I exercise my discretion in accordance with section 68 of the Magistrate's Act, Chapter, 54 and make the Order as follows:

- (i) The Appeal is dismissed as relates to liability;
- (ii) The Appeal is allowed as relates to the quantum of damages.
- (iii) The Appellants are ordered to pay the sum of Two Thousand, Eight Hundred and Fifty (\$2,850.00) Dollars plus costs of One Hundred (\$100.00) Dollars. In the event the parties are unable to agree on how the payment is to be made, I remit the issue of scheduling of the payment back to the Magistrates Court for determination.
- (iv) I make no order as to costs.

Dated this th 16 day of September, 2022


Camille Darville Gomez
Justice